

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF THE DENIAL OF)
A SUBSTANTIAL DEVELOPMENT PERMIT)
BY THE WHATCOM COUNTY COMMISSIONERS)
VIRGIL A. COUNTER,)
Appellant,)
vs.)
WHATCOM COUNTY,)
Respondent.)

SHB No. 8
FINDINGS OF FACT,
CONCLUSIONS AND ORDER

This matter, a Request for Review of denial of a substantial develop-
ment permit applied for by Virgil A. Counter of Bellingham, Washington,
came before members of the Shorelines Hearings Board as a formal hearing
in the Whatcom County Courthouse in Bellingham, Washington at 10:00 a.m.,
January 17, 1973.

The appellant, Virgil Counter, was represented by Craig Hayes and
respondent Whatcom County by William Gardner.

On the basis of testimony heard, exhibits examined and arguments of

1 counsel, the Shorelines Hearings Board prepared Proposed Findings of
2 Fact, Conclusions and Order which were submitted to all parties on
3 April 6, 1973. No objections or exceptions to the Proposed Findings,
4 Conclusions and Order having been received, the Shorelines Hearings
5 Board makes and enters the following:

6 FINDINGS OF FACT

7 I.

8 In January, 1965, appellant purchased a 100 foot wide shoreline
9 lot on Lake Whatcom composed of 220 feet in depth of upland above the
10 line of vegetation and 140 feet in depth of shoreland below the line of
11 vegetation. The property is located at 2157 North Shore Road, Whatcom
12 County. The lake shoreline in this vicinity has been developed for
13 residential use. Mr. Counter purchased his lot as a site for a single
14 family residence and occupied the site with a temporary mobile home.

15 II.

16 In 1966, appellant applied for and was granted a septic tank and
17 drainfield permit by the Whatcom County Health Department. The permit
18 granted contemplated a four bedroom house built approximately 100 feet
19 landward from the water with a required drain line pitch from the
20 house to the septic tank of 1/8 inch to 1/4 inch per foot.

21 In September, 1970, appellant applied for and was granted a county
22 building permit to construct a 1,000 square foot dock on his privately
23 owned shoreland abutting his upland property.

24 On August 6, 1971, appellant requested approval, which was granted
25 by the County Health Department, for use of the previously installed
26 septic tank and drainfield in connection with a two bedroom house to be

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1 built by a local contractor. The modified sewage disposal permit
2 shows the building location to be the same as previously authorized.

3 On September 10, 1971, appellant submitted an application for a
4 substantial development permit to build a two bedroom house on the
5 pier constructed under the county permit granted in 1970, prior to
6 enactment of the Shoreline Management Act. The County Commissioners
7 subsequently denied the substantial development permit as not complying
8 with Section 2 of the Shoreline Management Act. That denial is the
9 subject of this Request for Review.

10 III.

11 Acting under a county building permit granted for a \$500.00 dock
12 having an area of 1,000 square feet, appellant has constructed a pier
13 exceeding 2,500 square feet in size at a cost of approximately
14 \$7,000.00 for design and construction.

15 IV.

16 Lake Whatcom serves as a municipal water supply for the City of
17 Bellingham.

18 V.

19 There is adequate space on the upland owned by appellant to
20 accommodate a larger house than that planned, together with associated
21 fixtures.

22 VI.

23 Sewage from the proposed development would be transported by gravity
24 pipeline over a public water supply to a sump pump, dependent on
25 continuous electrical service and mechanical perfection for safe
26 continuous operation.

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VII.

The sewage system as proposed is not covered by the sewage disposal permit now held by Virgil Counter. Current county standards would cause rejection of the sewage system as proposed.

CONCLUSIONS

I.

The substantial development permit application was filed by appellant prior to adoption of the guidelines required by the Act and therefore judgment as to validity of permit rejection must be based on Section 2 of the Act.

II.

Section 2 of the Act provides that there be protection against adverse effects to the public health. We find that the sewage system proposed constitutes a threat to public health through possible contamination of the city water supply.

III.

Section 2 of the Act provides that permitted uses shall be designed and conducted so as to minimize insofar as practical, any resultant damage to the ecology and environment of the shoreline. We find that the proposed development for waterfront single family dwelling has not been designed and conducted so as to minimize such damage, in that it is entirely practical to site the proposed dwelling on the available upland, thereby eliminating the threat to the public water supply and minimizing the intrusion on the shoreline environment.

IV.

We find no valid argument to support the contention that by

1 investing in a structure, which had not been approved by local
2 regulatory authorities, appellant has established personal rights which
3 outweigh the public interest as reflected in the Shoreline Management
4 Act.

5 Therefore, the Shorelines Hearings Board makes this

6 ORDER

7 On the basis of the foregoing Proposed Findings of Fact and
8 Conclusions, it is hereby ordered that the decision of Whatcom County
9 in denying a substantial development permit to appellant be upheld.

10 DONE at Olympia, Washington this 23rd day of May, 1973.

11 SHORELINES HEARINGS BOARD

12 Walt Woodward
13 WALT WOODWARD, Chairman

14 Ralph A. Beswick
15 RALPH A. BESWICK, Member

16
17 W. A. GISSBERG, Member

18 Robert F. Hintz
19 ROBERT F. HINTZ, Member

20 Tracy J. Owen
21 TRACY J. OWEN, Member

22
23 JAMES T. SHEEHY, Member

24 Mr. W. A. Gissberg, the sixth member of this Board, not having
25 participated in the hearing on this matter has declined to sign this
26 Order.

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